

APPROVED MINUTES  
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	May 6, 2003
Time of Meeting:	6:30 p.m. (Closed Session) 7:30 p.m. (Regular Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

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**ROLL CALL**

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:30 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez, Livengood (arrived during the Closed Session), and Polanski.

**CLOSED SESSION**

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following item listed on the agenda:

**CONFERENCE WITH REAL PROPERTY NEGOTIATOR**

(Pursuant to Government Code Section 54956.8)

Property: APN Nos. 86-05-021 and 86-05-009

Negotiating Party: Thomas J. Wilson

Under Negotiation: Price and Terms of Payment

Mayor Esteves adjourned the meeting to closed session at 6:31 p.m.

The City Council meeting reconvened at 7:30 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez, Livengood, and Polanski present.

**CLOSED SESSION  
ANNOUNCEMENTS**

There were no closed session announcements.

Mayor Esteves asked the audience not block the aisle ways for safety purpose, and informed the audience there was space downstairs in the lobby and the Committee Room to view the Council meeting.

**PLEDGE**

Mayor Esteves led the Council and audience in the Pledge of Allegiance.

**MINUTES**

MOTION to approve the City Council minutes of April 15, 2003, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Dixon, Polanski.

Ayes: 5

**SCHEDULE**

City Manager Thomas Wilson reported that a City Attorney Council Subcommittee meeting was scheduled for May 7, 2003, at 9:30 a.m.

Vice Mayor Dixon reported on May 7<sup>th</sup> she would be attending a County Emergency Preparedness Council meeting at Noon at the Sheriff's building and a VTA Special Ad Hoc Financial Meeting at 4:00 p.m.

Councilmember Polanski reported the May 10 unveiling of the Legends of Milpitas artwork had been postponed, and she had asked the City Manager to agendize the actual location for the art at Murphy Park.

MOTION to approve the Schedule of Meetings as amended.

M/S: Livengood, Gomez.

Ayes: 5

**PRESENTATIONS**

Mayor Esteves read a proclamation proclaiming May 2003 "Older Americans Month" and presented it to Marcia and Doran Fraser.

Mayor Esteves read a proclamation proclaiming May 11-17, 2003, "Historic Preservation Week" and presented it to Irene Jefferson.

Mayor Esteves read a proclamation proclaiming May 18-24, 2003, "Public Works Week" and presented it to Public Works employees Steve Smith and Marilyn Nickel.

Mayor Esteves read a proclamation proclaiming May 2003 "Bike to Work Month" and presented it to Rob Means, a member of the City's Bicycle Transportation Advisory Committee.

Mayor Esteves read a commendation recognizing Sunita Lodha for providing support to the youth of Milpitas and presented it to Sunita Lodha. Ms. Lodha presented the Mayor with a \$100 donation to the City of Milpitas.

Mayor Esteves read a commendation, commending the former employees of the Ford Motor Plant as they gather in a Reunion in recognition of the 20<sup>th</sup> Anniversary, May 17, 2003, of the Ford Motor Plant's closing in Milpitas, and presented it to Bob Higday, Doris and Carlie Houseworth, Shirley and Darrell LaFond, and Wanda King.

Mayor Esteves asked Vice Mayor Dixon to assist him in giving out the next group of presentations. Mayor Esteves read a commendation, congratulating the Milpitas High School Artificial Intelligence Robotics Club for qualifying to compete in the First National Robotics Competition in Houston, Texas, April 10-12, 2003, and presented it to Principal Charles Gary and Teacher Stephen Cox. Mr. Gary said he hoped everyone recognized all of the time and energy it took to put this project together and thanked everyone for their support.

Mayor Esteves, in recognition of the Milpitas High School Artificial Intelligence Robotics Club's achievement, presented Certificates of Commendation to:

Industry Coaches: Ceal Craig; Tim Craig; and Fred Zeise

Students: Daniel Chang, President; Vincent Domincil, Vice President

Edward Lee, Secretary; Jacqueline Chan, Co-treasurer

Victor Domincil, Co-treasurer; and Clifford Lin, Engineering Lead

Parent Partners: Milan Chang; Peter Chang; Charles Lee; and Sung Lin

Mayor Esteves, in recognition of the Milpitas High School Artificial Intelligence Robotics Club's achievement, presented Certificates of Appreciation to:

Sponsors: Kleiner, Perkins, Caufield & Byers; Wells Fargo Bank; Bank of America; United Commercial Bank; Integrated Device Technology, Inc.; and TSMC (The IC Foundry Leader)

School Support: Stephen Cox; Bruce Whiting; and Charles Gary.

Mentor: Bellarmine College Preparatory.

Mayor Esteves presented Certificates of Appreciation for invaluable insight and guidance in the development of the Financial Utility Master Plan, which was approved by the Council on April 15, 2003, to Douglas Chun, Keith Walker, John Hemstreet, and Henry Ku.

## **CITIZENS FORUM**

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Rob Means, Milpitas, commented that the VTA's financial situation had been on the front pages of the newspapers recently and since Milpitas was looking at BART and had a lot to lose or gain, he thought Milpitas needed to be out in front addressing the PRT, which has a huge potential, and if Milpitas becomes a leader of this technology, it would be in good shape to get subsidies from foundations and government grant money. Mr. Means suggested Milpitas fund an independent study to determine the true cost of PRT technology; contribute to the Cities 21 project; bring the Sky West prototype to the Bay Area; and extend funding of the current Yosemite/Curtis crossing study to include PRT options.

## **ANNOUNCEMENTS**

Councilmember Polanski thanked the residents who came by for the Arbor Day celebration and planting of a tree; wished everyone a happy Mother's Day on Sunday; and announced the Parks, Recreation, and Cultural Resources Commission last night moved its June 2 meeting to June 14 at 9:00 a.m. for the Commission's annual park tour.

Vice Mayor Dixon commented that there was a letter in the Post this past week addressing the issue of the School District looking at a possible parcel tax that would be used for teachers' salaries, programs, technology, etc., and stating that we already passed a bond measure in 1996 inferring that some of that money went into administration and teachers' salaries. Vice Mayor Dixon said she wanted to make some comments as the former head of the Friends of Milpitas Schools and also as a member of the Bond Oversight Committee and presented a brief update on the latest report from the School District concerning the \$64.7 million bond measure for renovation and new building projects throughout the District.

Mayor Esteves thanked the Chamber of Commerce and staff for doing a good job on the State of the City Address; congratulated Solelectron for sponsoring a celebration of volunteers week; and thanked the members of the new Economic Development Commission who all attended the first meeting and scheduled another meeting for May 12, 2003.

## **AGENDA**

Councilmember Gomez requested Item 6 be moved before the public hearings. Mayor Esteves asked that Item 4 be heard after Item 6.

MOTION to approve the agenda as amended.

M/S: Polanski, Livengood.

Ayes: 5

## **CONSENT CALENDAR**

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. There were no requests.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as submitted, in accordance with the staff recommendations.

M/S: Gomez, Livengood.

Ayes: 5

\*7.  
League of California Cities  
Special Meeting

Designated Vice Mayor Dixon as the voting delegate for the Special Meeting on May 15, 2003, of the League of California Cities General Assembly.

\*12.  
Hillside Site & Architectural  
Review Vista Ridge Drive.

Approved the Hillside Site & Architectural review application (P-SA2003-19) with the Findings and Special Conditions listed in a separate attachment to the City Council: 517

\*13.  
Community Concert Band

Authorized budget transfer from Holding Account 1377-2500 to Cultural Art Service and Supplies Account 100-168-4221 in the amount of \$1,070 to purchase new music, replace broken music stands and other necessary supplies

\*14.  
Transportation Development  
Act Article 3 Funds

Adopted Resolution No. 7302 declaring the City's desire and eligibility to use this year's TDA Article 3 funds towards the construction of a sidewalk on Calaveras Boulevard between Gadsden and Temple Drive (Project No. 4208).

(Project No. 4208)

\*15.  
Augustine Park Renovation  
(Project No. 5067)

Adopted Resolution No. 7303 granting final acceptance and releasing the bond.

\*16.  
Credit Card Vendor

Authorized the City Manager to execute the agreement with the State's Cal Card program, issued through U.S. Bank, to replace the current credit card vendor with the State's Cal Card program, subject to approval as to form by the City Attorney.

\*17.  
Brian Kangas-Foulk  
(Project No. 4180)

Authorized the City Manager to execute the agreement amendment for additional construction support services with Brian Kangas Foulk for Montague Expressway at Milpitas Boulevard Widening (Project No. 4180), subject to approval as to form by the City Attorney.

\*18.  
Wattis Construction Co., Inc.  
(Project No. 4182)

Authorized the City Manager to execute an amendment to extend the contract one additional year with the Wattis Construction Co., Inc. to December 18, 2003, for asphalt pavement patching repairs, subject to approval as to form by the City Attorney.

\*19.  
Miscellaneous Vendors

Approved the following purchase requests:

1. \$5,245.00 to CDW Government, Inc. for the purchase of a highly secured wireless access point equipment to be installed at the Milpitas Sports Center, which will eliminate costly T1, telephone lines. This equipment is being requested by the Information Services Department. (Funds are available from the Telecommunications Infrastructure project (Project No. 8093) for this purchase.)
2. \$8,655.88 to Altrun, Inc. for the purchase of a high speed 587 gigabyte data storage drive for the new Utility Management system for the Information Services Department. (Funds are available from the Desktop Technology project (Project No. 8109) for this purchase.)
3. \$8,590.96 to NEC Business Network Solutions, Inc. for the purchase of core redundancy upgrade hardware and software for the telephone switch at Fire Station 1 for the Information Services Department. (Funds are available from the Telecommunications Infrastructure project (Project No. 8093) for this purchase.)
4. \$5,000.00 to BBI Engineering for the purchase and installation of a Smart Board 580 at the Emergency Operations Center for the Fire Department. (Funds are available from the Emergency Operations Center project (Project No. 8036) for this purchase.)
5. \$9,000.00 to Anderson Tree Care for services to reduce crowns of 120 Yarwood trees and install earth anchors on same for the Tree & Landscape Function. (Funds are available from the Function's operating budget for this service.)
6. \$7,000.00 to Olympic Mailing Services for printing, folding and addressing chloramine conversion literature to the City's water customers for the Utility Engineering Function. (Funds are available from the function's operating budget for this service.)
7. \$7,260.00 to ThyssenKrupp Elevator Corp. for annual service maintenance of the two City Hall elevators for the Facilities Maintenance Function. (Funds are available from the function's operating budget for this service.)
8. \$10,300.00 to PES Environmental, Inc. for core drilling and environmental monitoring of the Corp Yard underground gasoline tank for MTBE in ground water, a new requirement of the Regional Water Quality Control Board, for the Fire Prevention and Utility Engineering Function. (Funds are available from the Miscellaneous Minor Water Projects project (Project No. 7066) for this service.)

9. \$5,500.00 to Camp Dresser McKee for services to provide technical evaluation of 2000 reimbursement claim, Subtitle D, for the Newby Island landfill for the Utility Engineering Function. (Funds are available from the function's operating budget for this service.)
10. \$9,528.00 to Intelligent Technologies for quarterly and annual preventive maintenance and inspections of fire sprinkler systems at five City locations for the Facilities Maintenance Function. (Funds are available from the function's operating budget for this service.)
11. \$10,892.00 to ACCO for monthly and quarterly preventative maintenance services on the City Hall HVAC mechanical and control systems for the Facilities Maintenance Function. (Funds are available from the function's operating budget for this service.)
12. \$8,330.00 to Robert A Bothman for repairing 980 sq. ft. of sidewalks and gutters due to water break repairs at three locations on city streets for the Utility Maintenance Function. (Funds are available from the function's operating budget for this service.)
13. \$8,345.00 to Balch Petroleum for secondary containment testing at three City underground diesel tanks as a new State requirement for the Fleet Maintenance Function. (Funds are available from the function's operating budget for this service.)
14. \$7,531.58 to Stewart and Stevenson for emergency repairs of a water pump and transfer case on Fire Engine 2 for the Fleet Maintenance Function. (Funds are available from the function's operating budget for this service.)
15. \$54,396.50 to Preston Pipeline for the emergency repair of a 16" steel water main on Milpitas Blvd. and an 8" water main on Sinclair Frontage Rd. for the Utility Maintenance Function. (Funds are available from the function's operating budget for this service.)
16. \$12,213.67 to Peterson Caterpillar for on-site radiator repairs at the Gibraltar Pump station and engine fuel pump and alternator replacement of the Corp Yard backup generator for the Utility Maintenance and Fleet Maintenance functions. (Funds are available from both functions' operating budget for these services.)
17. \$5,000.00 to American Management Systems, Inc. for renewal of annual maintenance agreement of the computerized budget system for the Information Services Department. (Funds are available from the department's operating budget for this service.)
18. \$5,500.00 to Identix, Inc. for renewal of annual maintenance agreement of the computerized fingerprint system for the Information Services Department. (Funds are available from the department's operating budget for this service.)
19. \$6,000.00 to Western Data Com for renewal of annual maintenance agreement of the Police Department's SLETS system for the Information Services Department. (Funds are available from the department's operating budget for this service.)
20. \$10,000.00 to Aether Systems, Inc. for renewal of annual maintenance agreement of the Fire Department's records management system for the Information Services Department. (Funds are available from the department's operating budget for this service.)
21. \$24,235.00 to Wattis Construction Co. for emergency replacement of 4,255 sq. ft. of asphalt at S. Abbott Ave. and Calaveras Boulevard due to pavement failure for the Street Maintenance Function. (Funds are available from the function's operating budget for this service.)
22. \$5,500.00 to DMG Maximus for assisting the City in filing of the annual State Controller's report and Street Fund report in the State's format for the Finance

Department. (Funds are available from the department's operating budget for this service.)

\*20.  
Payroll

Approved the Payroll Register for the period ending April 5, 2003, in the amount of \$1,610,425.92.

## REPORTS OF OFFICERS & BOARDS

6.  
Resolution Recognizing the  
Flag of the Former Republic  
Of Vietnam

Mayor Esteves explained the item before the Council was adoption of a resolution recognizing the flag of the former Republic of Vietnam as the flag of the Vietnamese –American Community in California and authorizing the display of the flag as part of flag ceremonies at the ceremonial flag poles at the Higuera Adobe and City Hall complex and expressing support for ACR No. 68 related to the display of the same flag at State-owned properties. Mayor Esteves asked for comments from the Council before hearing from the public.

Councilmember Gomez commented when he and the Mayor started looking at this issue two months ago, he didn't think they realized how important this was to the Vietnamese community and said the issue was this Council recognizing the flag of the former Republic of Vietnam as the flag of the Vietnamese-Americans in the State of California and allowing that flag to be flown in our City at the four poles at the Civic Center complex and also at the Adobe. Councilmember Gomez further stated this was a request from the Vietnamese community for this Council to show its support and was not a request to replace the U.S. flag or the flag of the State of California or the Milpitas flag but to fly the Vietnamese flag alongside those flags. Councilmember Gomez said he thought it important to understand what this flag represents; it represents the struggle against oppression by both Vietnamese and American forces; it represents a never-ending fight for freedom symbolizing hope for dreams for democracy in Vietnam; and speaking for himself, he was proud to support and recognize this community and their flag and allow this flag to be flown at the Civic Center and the Adobe.

Councilmember Livengood thanked both Mayor Esteves and Councilmember Gomez for putting this item on the agenda and said it was very important for a couple of reasons; it recognizes one of the most important portions of the community; it was important to recognize the Vietnamese-American community and their value; it also solidifies a policy of this Council to recognize those folks who come to us from other lands and recognize those flags; the Council designated four poles at the Civic Center complex as ceremonial flag poles to recognize other flags so not only does this recognize the Vietnamese community but also solidifies that policy to recognize those people who come from other lands. Councilmember Livengood said he was very proud of the Vietnamese-American community in this City, they have been a great part of this City government and community for many years; was glad there were present tonight, and saluted them as well as the City Council for putting this on the agenda.

Councilmember Polanski said it was wonderful to see so many members of the Vietnamese community present and she knew each one has been a dedicated part of the community and throughout the State for years. Councilmember Polanski further stated she knew this symbol they wished to have recognize the Vietnamese community in the State of California was very important to them and she certainly supported this action.

Vice Mayor Dixon said she was speaking on another issue tonight as she was probably the only Councilmember old enough living in the United States during those years who fully understood the heartache and sacrifices that many of you and many still living in Vietnam were going through; she lost many friends in the sixties and it always bothered her that when those friends who did return weren't treated very nice as it was a war many looked down on but time does heal; troops coming back from the current war were putting their lives on the line for freedom and that was way you are all here tonight to honor that and the struggle for freedom that you all have gone through and thanked everyone for being present tonight.

Mayor Esteves said he was very pleased his colleagues were really supportive of this resolution and the City of Milpitas, including himself, wanted to be a leader with respect to this issue and that was why a resolution was being adopted instead of a proclamation because it made a big difference. Mayor Esteves further stated he appreciated his colleagues' support and read the actions set forth in the proposed resolution.

Mayor Esteves invited comments from the audience.

Phillip from San Jose expressed his appreciation on behalf of the Vietnamese-American community to the Mayor and Council for giving them a special moment tonight to recognize the flag of the Republic of Vietnam; the flag represented freedom and human rights that they cherished, the same right as everyone in America does, and they were proud to have this flag fly alongside the Red, White, and Blue.

Thomas from San Jose, said he was also a public servant for Santa Clara County and thanked the Council; this flag recognized the freedom of the people because right now in communist countries like Vietnam they only have one party; the United States has many parties and they have a lot of parties for the people to choose but not in Vietnam; and they have hope today the recognition of the Milpitas City Council will be the hope for the Vietnamese community here to fight for more freedom in Vietnam.

A man from San Jose spoke on behalf of the Vietnamese Community of Northern California expressing appreciation to the Council and stated that 58,000 American soldiers died for their freedom and they will always remember the City Council of Milpitas for being a leader in Northern California.

A man said as a community representative, he wanted to say thank-you for allowing them to share their culture and this was a great opportunity they were being given, the flag was a symbol for culture, heritage and a symbol for freedom, which was so important for the younger generation .

A man who said he was a refugee said thank-you very much to the Council for their help.

A man said he was a member of the U.S. Army Special Forces in Vietnam, wore the Vietnamese flag on his cap, fought alongside American soldiers who also fought for the flag, and thanked the Council for understanding and the resolution to keep their flag alive;

A lady said she was a resident of Milpitas and thanked the Council for recognizing their flag.

A man said, as a former Vietnamese-American community President, this was an honor and historical day, he had been working with the Mayor and acknowledged Milpitas as the first city in Northern California to make history and dared to give a resolution and not just a proclamation; this was not only for the Vietnamese community but also for the 58,000 American soldiers who died to protect this flag; Milpitas was making history today; and they would be trying to work with the whole State to follow the City of Milpitas.

A Milpitas High School student thanked the Council for approving the Vietnamese flag, said he was representing the second generation and believe there was a reason for the flag.

Paul Hay, Milpitas, said he had heard inspiring words this evening; he served in the military in the early 70s and trained with many Vietnamese; the support for ACR 68 was laudable and he supported that but he did have one concern. Mr. Hay commented on an October 30, 1999, memo from the City Attorney regarding the flag issue at that time and which addressed legal issues related to ceremonial flag poles. Mr. Hay said the memo addressed a technicality having to do with categories and while he supported this action tonight, questioned what would prevent this Council or future Councils from flying the communist Vietnamese flag because based on the memo, they could not do that. Mr. Hay left copies of the memo and said he hoped there would be a response from the City Attorney.

A man said he was a U.S. citizen, fought during the Vietnam War, and thanked the Council very much.

A girl said she was a Vietnamese American, thanked the Council for commemorating Black April because she thought it was very important to know where her roots are and where they came from, it was important to educate the youth, and it was important for her generation to think about the hardships of the Vietnamese people and how they came to the United States.

A woman said she was very grateful to the City of Milpitas, in April 1975 over 100,000 Vietnamese fled their homeland, she was very grateful to be here and be a citizen of America; and she remembered one question out of 100 when she became a citizen – if you support communism you cannot become an American citizen.

A man said he had been around this town a long time, was also in Korea, there is a lot of aggression and a lot of junk that goes on in a lot of countries, he had a problem with flaunting any flag except the three in the Council Chambers (American flag, California flag, and Milpitas flag), there are a lot of Spanish, Koreans, a lot of different ethnic groups in Milpitas, he had a lot of respect for those people but he could not in all honesty have the Spanish or Korean turned down if we are going to fly the Vietnamese flag, asked about those countries, what about those oppressed people, the difference between the United States and other countries was we didn't cut and run and that was what makes us great and we ought to keep the U.S. the U.S.

A man from San Jose said he wanted to clarify some technical things about the flag and commented that in 1948, this flag was for the whole country of Vietnam but in 1954 the communists took over; and thanked the Council for its support.

A man who said he was a former senior officer of the Republic of Vietnam Army and the resolution the Council was about to adopt represented not only the half million Vietnamese and military who died for the freedom of South Vietnam but also remembered the 58,000 American soldiers who died for this flag; and urged the Council to adopt the resolution.

A man who said he was a Vietnam Veteran and former President of one of 19 communities in San Jose said he appreciated the Council's help; Vietnamese-American citizens contributed to the whole nation with their labor, intelligence, and hard work; he looked at this area as the melting pot where every culture can come in here and we keep them together peacefully.

A man who said he was a member of the South Vietnamese Air Force and wanted to give an explanation to the gentleman who wanted to keep the U.S. the U.S.; they are U.S. citizens and explained that it was about identity; there were two categories of people in Vietnam – one communist and the ones who fought and died for freedom, and they wanted to tell the people in Milpitas that they don't belong to them (communists); they salute the American flag; because they are Americans and the other one because is where they came from.

Pham Huu Son, President of Vietnamese-American Community of Northern California, thanked the Council for recognizing their flag.

Mayor Esteves said he also wanted to recognize all the Vietnamese-American attendees tonight stating that many were downstairs in the lobby and the Committee Room and thanked them for coming.

MOTION to adopt Resolution No. 7300 recognizing the flag of the former Republic of Vietnam as the flag of the Vietnamese-American Community in California and authorizing the display of the flag as part of flag ceremonies at the ceremonial flag poles at the Higuera Adobe and at the City Hall complex and expressing support for ACR No. 68 related to display of the same flag at State-owned properties thereby making Milpitas the first city in Northern California to take this action.



M/S: Gomez, Livengood.

Ayes: 5

Mayor Esteves said he knew this was a very momentous event and expressed appreciation to his colleagues on the Council. The Mayor said he wanted to sign the resolution tonight so that copies could be provided to the audience.

## RECESS

Mayor Esteves recessed the City Council meeting at 8:48 p.m. The City Council meeting reconvened at 9:07 p.m.

### 4. Artificial Intelligence Robotics Club

Mayor Esteves reported a request had been received for financial assistance of \$500 from the Milpitas High School Artificial Intelligence Robotics Club as a symbolic gesture of support of the Club's activities; the Club had also requested permission to do an introduction/presentation of the Club to bring community awareness and support.

Club President Daniel Chang presented information about the Artificial Intelligence Robotics Club, who they are, their mission and objectives, and described their first competition in 2003. Ceal Craig commented on their first regional competition that resulted in building their first robot in three weeks and winning seven of nine matches and their first national competition at which they won two National matches, ran in every match, and were one of three rookie teams from California out of a total of 92 California teams. Ms. Craig said they needed ongoing support and help in the future and described the benefits of being a sponsor. Ms. Craig further stated they were requesting \$500 from the City as a symbolic gesture and permission to use the City's logo on banners, collateral and presentations in robotics competition. Ms. Craig also shared some of their goals for the future and their plan to expand the program to include elementary and middle schools. Following the verbal presentations, a short video clip was shown.

Mayor Esteves repeated the purpose of the item, stating the Artificial Intelligence Robotics Club wished to make the City of Milpitas and its community aware of its existence and to encourage students to participate as it was an opportunity to learn, especially in the fields of Engineering and the Sciences; the \$500 being requested would be symbolic of the City's support because the real sponsors contribute thousands of dollars.

Vice Mayor Dixon shared her enthusiasm stating that she thought this was great. Councilmember Polanski said she also thought this was amazing, wished them success, and said she was glad they had an opportunity to make a presentation so others in the community could see what they were doing. Councilmember Livengood said he appreciated the hard work done by the Club and he would be giving them a personal check for \$100. Councilmember Gomez said he thought this was great, was supportive, and was amazed at what they accomplished in three weeks. Mayor Esteves congratulated the Club on its work and encouraged them to keep it up. Vice Mayor Dixon suggested in the Club's search for sponsors, if they come across a business or someone who might be interested, the Club should urge them to contact a member of the Council for a recommendation.

MOTION to provide \$500 financial assistance to the Milpitas High School Artificial Intelligence Robotics Club, and allow the use of the City logo.

M/S: Dixon, Polanski.

Ayes: 5

## XII. PUBLIC HEARINGS

### 1. Entertainment Event Permit Rotary Carnival

City Clerk Gail Blalock reported the item before the Council was a request from the Milpitas Rotary for an Entertainment Permit to hold a Carnival in the Walmart parking lot at McCarthy Ranch on May 15-18, 2003; the Rotary Club also requested waiver of the fees for Fire standby personnel; however, the Council had received a memo from the Fire Marshal explaining that this was not necessary based on the security plan presented and previous experience with this event. Ms. Blalock further reported the application had been reviewed

and approved, subject to conditions by the various City departments, and the insurance certificates were approved by the City's Risk Manager. Ms. Blalock said that following the public hearing, staff recommended that the permit be approved subject to the conditions noted and submittal by the applicant of the written consent of the property owner.

Todd Flesner, President of the Milpitas Rotary Club, stated the event was not only fun, but an opportunity for the Milpitas Rotary Club to give back to the Community via its fund raising efforts; this fund raising event was expected to raise over \$15,000 of direct support to community activities.

Mayor Esteves opened the public hearing and invited comments. There were no requests to speak.

MOTION to close the public hearing.

M/S: Livengood, Polanski.

Ayes: 5

MOTION to approve the Entertainment Event Permit for the Milpitas Rotary Club for a Butler Amusement Carnival on May 15-18, 2003, at the Walmart parking lot at McCarthy Ranch, subject to the special conditions from Planning, Finance, the Fire Department, and written consent of the property owner.

M/S: Gomez, Dixon.

Ayes: 5

2.  
2003/04 Rate Analyses and  
Connection Fees  
Introduction of Ordinance Nos.  
120.41, 208.38, and 239.2

Principal Civil Engineer Darryl Wong reported the item was the proposed 2003/2004 water and sewer rates and connection fee consideration; staff requested that the storm drain connection fee consideration be continued to May 20, 2003. Mr. Wong explained the manner in which the rates were based and some of the factors that influenced the recommended rates including wholesale water cost increases (San Francisco Public Utilities Commission was increasing its wholesale rates by 22%; the Santa Clara Valley Water District would have a 9-1/2% rate increase; and the South Bay Water Recycling Program would have a 31% increase in the upcoming year). Mr. Wong said the resulting recommended increases for single family residents were: Water Rates would increase by \$2.99/bimonthly and Sewer Rates would increase by \$1.91/month. Mr. Wong explained that increases for other customer classes would be based upon strength of discharges; noted that many industries had worked very hard to decrease the volume of their discharge resulting in the material ending up in the sewers having a lot less water for the volume of water that's being discharged; therefore, the strength had increased and the unit charges for these discharges had gone up; however, the volume had decreased substantially; and the total costs had not changed for most of the industry because of this counter balance.

Mr. Wong reported that staff did a comparison between the charges that the City of Milpitas had for water and utilities against neighboring cities for 2002/2003; Milpitas was currently among the lowest; with the proposed increase, Milpitas would be slightly below the average of the area; and most of the cities staff had spoken with would be increasing their rates in 2003/2004.

Councilmember Livengood, addressing the increase in the recycled water cost, inquired how far apart the HCF charges for recycled water was vs. potable. Mr. Wong stated initially, the South Bay Water Recycling Program had established a rebate to encourage the use of recycled water; part of the increase being seen now was because the recycled water had become more established; the rebate had been removed; the rates were still below the potable water; and the target was that the rates would not be more than 80% of what a typical user would pump out of the ground water basin, which was significantly lower than what is paid for treated water coming from the treatment plant.

Vice Mayor Dixon expressed concern about what the increase would do to the School District, which had recently been added to the Recycled Water Program, once the City Attorney's

interpretation of Proposition 218 was received; and inquired what amount of money would the School District be looking at. Mr. Wong responded the recycled water was sold at a substantially lower rate than potable water for irrigation purposes; by changing from potable water to recycled water, there would be an immediate savings; relative to the connection fees, and existing customers would not experience a fee. Vice Mayor Dixon asked if what Mr. Wong was saying was that the storm drain issue had to do with connections. Mr. Wong explained that a storm drain fee was not being considered at this point, it was something staff would like to bring back to the Council in the future for a storm drain rate charge but staff needed to be sure the City met all the requirements relative to Proposition 218. Vice Mayor Dixon requested when staff got to the point of putting payment information together, the School District be invited to be part of the discussions.

Mr. Wong explained the City had two water categories: one being irrigation water and the other was well water; the reason for the different categories was that the Santa Clara Valley Water District had a pump tax and charged very little for agricultural wells; in order to keep competitive with the Santa Clara Valley Water District, the City had to set the recycled water rate much lower so that there would be a differential from what would have been paid by using the ground water (a drinking water source) vs. recycled water.

Mr. Wong, addressing connection fees, stated staff was proposing connection fees for water and sewer that would apply only to new connectors; was a one-time fee; the increase for water and sewer connection fees would be effective in July 2003; the premise for the increases was based on the Financial Utility Master Plan – water use for water connection fee and waste water discharges for waste water.

Mayor Esteves opened the public hearing and invited comments. There were no requests.

MOTION to close the public hearing.

M/S: Dixon, Polanski. Ayes: 5

Mr. Wong read the titles of Ordinance Nos. 120.41 and No. 208.38

MOTION to waive the readings beyond the titles.

M/S: Polanski, Livengood. Ayes: 5

MOTION to introduce Ordinance No. 120.41 setting Water Service Charges and Water Connection Fees and Ordinance No. 208.38 setting Sewer Service Charges and Sewer Connection Fees.

M/S: Polanski, Livengood. Ayes: 5

MOTION to continue Ordinance No. 239.2 setting Storm Drain Connection Fees to the May 20, 2003, City Council meeting.

M/S: Polanski, Livengood. Ayes: 5

3.  
Amendments to the  
General Plan  
Introduce Ordinance No. 38.761

Planning Manager Tambri Heyden reported the purpose of the Zoning Code amendments was to achieve the Code's clarity, comprehensiveness, and effectiveness as a regulatory tool, and to implement policies in the Housing Element and the Child Care Master Plan, as well as to address changes in State law; there were some minor amendments to the Zoning map and the land use map to include three Serra Center parcels into the Midtown Plan and to designate all of the City's parks and trails as Park and Public Open Space (POS) and two Railroad right-of-way parcels as heavy industrial; and there were a total of 28 issues in the amendment package.

Ms. Heyden further reported the issues had been organized into a matrix and issue number 34, regarding new regulations for inclusionary zoning (required affordable housing) had been removed from the proposed ordinance for further staff study and would be presented as a separate ordinance at a later time. Ms. Heyden proceeded to review the issues.

Ms. Heyden called attention to three of the issues (No. 1, No. 6, and No. 11). With respect to Issue No. 1, regarding the antenna provision, Ms. Heyden reported that antennas in residential areas were not currently regulated, thanked those who had worked on the work effort from the Planning Commission, Citizens Emergency Preparedness Advisory Commission, Community Advisory Commission, and the Telecommunications Commission, and recognized Commissioners present in the audience (Albert Alcorn, Dinesh Gupta, George Washburn, Paul Hay, and Cliff Williams). Ms. Heyden said that this would allow non-commercial antenna facilities to be an accessory structure without requiring a Use Permit; antennas would be allowed to a height of 25 feet; if the antenna was a telescope design, it could be allowed with no height regulations; prohibited guy-wires for antennas over 20 feet in height from grade; added color restrictions for antennas, powers, and masts; restricted the number of antenna support structures; and would require removal of abandoned antennas.

Addressing Issue No. 6, Ms. Heyden stated that this item was discussed in the fall when the first package of Zoning code amendments were discussed; at that time, a product called tri-limit asphalt composition was introduced; certain areas of the City were allowed use of this product with restrictions; there had been a concern about what could be done discourage future wood shake re-roof requests; this amendment would allow tri-asphalt composition throughout the City with staff approval; instead of allowing staff to approve wood shake re-roofs, staff was proposing that it be approvable at the Planning Commission level.

Addressing Issue No. 11, Ms. Heyden stated the Zoning Ordinance currently contained violation penalties; however, they were cumbersome and involved high staff cost to enforce; the proposed provision would add a similar system that would set up an administrative citation, set forth fines and appeal procedure

Ms. Heyden stated that, with respect with the CEQA State law, an Initial Study and Draft Negative Declaration were prepared for the amendments; the commenting period began on March 13, 2003, and closed on April 1, 2003; staff did not receive any comments; the impacts were determined to be less than significant; the Planning Commission discussed all the amendments at its meeting of February 26, 2003, and requested minor revisions, which were addressed by staff; on April 9, 2003, the Planning Commission held a public hearing and recommended Council approval of proposed Ordinance No. 38.761 (with the exception of issue number 34), amendments to the General Plan and Midtown Specific Plan maps and related Draft Negative Declaration.

Mayor Esteves opened the public hearing and invited comments.

Albert Alcorn, Telecommunications Commission, said he wanted to speak about the number of antennas restriction as this was a hot item with the Commission but he was very pleased with the way it was written. Mr. Alcorn further stated the issue for him was that a single antenna could cause far more visual intrusion than porcupine antennas, and he was very happy to see the number was not being regulated. Vice Mayor Dixon said she had a neighbor with an old TV antenna and inquired if there was any level of discussion as to how the City might go in to address homeowners who may have cable now but left the old antenna dangling. Mr. Alcorn said they didn't discuss that but he was in favor of getting them out. Vice Mayor Dixon said she strongly encouraged the Commission to discuss this on its next agenda. Mr. Alcorn said he would be willing to address it at a Telecommunications Commission meeting but was not sure they would have as much impact as the neighborhood beautification ordinance. Vice Mayor Dixon said she would leave it up to staff. Councilmember Polanski said she would also bring it up at the Community Advisory Commission meeting.

Glen Thomas said his comments would be directed primarily to amateur radio antennas commenting that amateur radio was created by the FCC and in 1985 there was a federal partial pre-empt of local ordinances; the two criteria specified were that a reasonable accommodation had to be made and he worked with Tambri and the subcommittee and thought the ordinance made a fair run at doing that; the other criteria was it needed to be the minimum regulation practicable to achieve the city's aims; there were a few areas in the ordinance that he took exception to; and again, his comments applied strictly to amateur radio antennas and did not believe these rules applied to TV and CB antennas. Mr. Thomas further stated he felt insisting on a permit process for amateur radio antennas was not the minimum; the minimum would be to put it up by right, it would have to meet the regulations but a permit should not be required; wind loading was specified in a couple of places in ways that were not completely consistent; having them regulated in two places and not one was not minimum regulation; he was not sure the two-mast limit also met the criteria of minimum regulation. Mr. Thomas also commented there was some discussion about lack of participation by the amateur radio community at the Planning Commission and explained there were several amateur radios operators who planned to go but looked at the agenda and it looked like it wouldn't be discussed so they didn't attend. Mr. Thomas recommended that the ordinance be reconsidered, his personal opinion was that he would like to see amateur radio antennas exempt as they have been for years, he was not aware there has been any problem in the past, and thought an ordinance wasn't needed to regulate something that may not be a problem.

Dinesh Gupta, Telecommunications Commission member and member of the subcommittee, said he wanted to address some of the questions that had come up from the Council and said the subcommittee was very concerned that there not be a general hardship to the residents and there should be no hardship to the ham operators in the City. Mr. Gupta said he and one committee member went around the City to see how many antennas and dishes were on houses and they found no more than three; in one case they found four; normally they found two dishes and one antenna; they did not see any dangling antennas; they tried to come up with a compromise that would not limit the number of antennas of a certain height; the ham operators were represented in the subcommittee meetings; and explained how they came up with the compromise.

MOTION to close the public hearing.

M/S: Livengood, Polanski.

Ayes: 5

Mayor Esteves said he thought it was a great ordinance but the key was always in the enforcement. Councilmember Livengood said he thought generally speaking, this was a very good document and was glad that the inclusionary issue was not included because he felt the Council had done a good job over the years without the necessity of having an inclusionary ordinance which can be very restrictive; however, he agreed with the gentleman about the amateur radio restrictions and didn't know if this was solving a problem that doesn't exist. Councilmember Livengood said he would be in favor of removing some of those restrictions because he had never heard a complaint but generally speaking, this whole process had worked well because it tied up some loose ends and he was very happy with this document.

Vice Mayor Dixon asked what type of antenna was the subject of a complaint that came out of Weller. Ms. Heyden said one was an abandoned TV antenna, one was a ham radio and one was a citizens band radio antenna. Vice Mayor Dixon said the one particular complaint that came in from Weller Ranch was about a pretty big antenna that towered over a neighbor's house. Ms. Heyden said one of the three cases was a 65 ft. antenna. Vice Mayor Dixon asked if this ordinance would take care of that. Ms. Heyden said it would.

MOTION to:

1. Adopt Resolution No. 7298 approving the Negative Declaration (EIA No. P-EA2003-1).
2. Adopt Resolution No. 7299 approving the amendments to the General Plan and Specific Plan maps (P-GM2003-1).

M/S: Dixon, Polanski.

Ayes: 5

Ms. Heyden read the title of Ordinance No. 38.761 (P-ZT2003-1 and P-ZC2003-1).

MOTION to waive the reading beyond the title.

M/S: Livengood, Polanski.

Ayes: 5

MOTION to introduce Ordinance No. 38.761 (P-ZT2003-1 and P-ZC2003-1).

M/S: Livengood, Polanski.

Ayes: 5

## **JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**

### **RA1. CALL TO ORDER**

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 10:35 p.m.

### **RA2. ROLL CALL**

Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez, Livengood, and Polanski.

### **RA3. MINUTES**

MOTION to approve the Redevelopment Agency minutes of April 15, 2003, including joint meeting with the City Council, as submitted.

M/S: Gomez, Polanski.

Ayes: 5

### **RA4. AGENDA**

MOTION to approve the agenda and consent calendar as submitted.

M/S: Dixon, Gomez.

Ayes: 5

### **RA5. CIVIC CENTER UPDATE (PROJECT NO. 8026)**

Principal Engineer Mark Rogge reported two contract change orders and five purchase orders relating to additional furniture and office appurtenances were recommended for approval for a total cost of \$40,482. Mr. Rogge reviewed the City Hall Budget reporting that after tonight's change orders and purchase orders, a project contingency of \$165,608 remained. Mr. Rogge also reviewed the third floor improvements and budget. Mr. Rogge reported that staff was nearing completion of more detailed plans for the fourth floor improvements and was working with three contractors to obtain pricing information.

MOTION to approve the two contract change orders and the five purchase orders included in the purchase order summary sheet.

M/S: Dixon, Polanski.

Ayes: 5

### **RA6. NINE MONTH FINANCIAL STATUS REPORT**

Finance Director Emma Karlen presented a review of the City's financial status for the nine months ended March 31, 2003, reporting that U.S. consumer confidence continues to decline; the regional unemployment rate was higher than the Nation and the State in February 2003; General Fund revenues were down approximately 5.9 percent; General Fund revised revenue projections were under budget by 2.66 percent; and General Fund expenditures for the nine months, through continuing cost-saving measures, were at 66.1 percent instead of 75 percent. Ms. Karlen commented on the General Fund reserve status and reported that for Fiscal Year 2002-03, revised projections showed the PERS Rate Stabilization reserves at \$5.55 million, the Capital Contingency at \$700,000, the Unreserved, Undesignated reserves at \$12.65 million for a total of \$18.90 million. Ms. Karlen said staff believed the City will be able to go into next year in a very stable condition and be able to continue delivering services to the community.

Councilmember Livengood asked why Ms. Karlen would predict next year's revenues will be increased over this year. Ms. Karlen responded she thought we were probably at the bottom

of the economic recession and would soon see a slight recovery. Councilmember Livengood said he was not nearly as optimistic that we would see an upturn.

Mayor Esteves commented that a strong indicator was the unemployment rate and asked if Ms. Karlen had a projection. Ms. Karlen responded she didn't have any projection on the unemployment rate.

Councilmember Polanski said that being out in the community and talking with people, she thought the unemployment rate in Santa Clara County was higher than what was being reported statewide.

Vice Mayor Dixon asked if the TOT (transient occupancy tax) reports were received quarterly. Ms. Karlen said they were now being received monthly. Vice Mayor Dixon said she had heard from various people that it could be up but with the SARS scare, people weren't traveling. Vice Mayor Dixon commented on a recent article in the San Jose Mercury News that surveyed ten cities but just focused on one very minor thing for Milpitas and expressed her disappointment that it really didn't address that Milpitas was facing the same things as the other communities but Milpitas' tactics were different. Vice Mayor Dixon credited the City Manager for Milpitas implementing a hiring freeze before other cities, for having a capital improvement reserve that other cities don't have, the situation was really bad in Fremont, and the article didn't mention that Newark and Union City anticipated having balanced budgets, so all was not equal out there.

City Manager Thomas Wilson commented that he thought the efforts that resulted in Milpitas being able to address this year's budget really go back to the policies and approaches taken in 1999, 2000, and 2001; \$7 million was put away in the PERS reserve, the General Fund reserve was raised by 50 percent, and \$7 million was put into a capital reserve fund. Mr. Wilson said right now more than \$3 million was being saved in frozen positions alone and the Council was due a lot of credit by making sure that when we had money, how we spent it and staff.

Mayor Esteves said he was interested in knowing how Milpitas compared to comparable cities with respect to expenditures.

MOTION to note receipt and file.

M/S: Polanski, Dixon.

Ayes: 5

**\*RA7.  
INVESTMENT PORTFOLIO  
STATUS REPORT**

Noted receipt and filed the investment report for the quarter ended March 31, 2003.

**RA8.  
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 11:01 p.m.

The City Council meeting continued.

**XIV. REPORTS OF OFFICERS**

**5.  
Out of State Travel**

Mayor Esteves said the City of Milpitas had been invited by the President and Mrs. Bush to attend a Ceremony and State Dinner at the White House on May 19, 2003, in honor of Gloria Macapal-Arroyo, President of the Republic of the Philippines; and as a representative of Milpitas, he wished to attend these two functions and would feel honored to represent the City.

Councilmember Gomez said he would be very proud to have Mayor Esteves in Washington D.C. representing Milpitas; however, he felt there was a definite line between those events that were social in nature and those events that were working on behalf of the City, and he felt this event was more social in nature and should not be paid for with taxpayers' funds.

Councilmember Gomez further stated he felt this was something that should maybe be paid out of a friends account or officeholder account rather than using taxpayer dollars, and felt the Council should be little more consistent when using the term fiscal responsibility.

Vice Mayor Dixon commented that the former Mayor went back to see President Clinton more than once, she objected to it but it was still an honor for the City; there was also the possibility that the President of the Philippines will reciprocate and visit the City of Milpitas; the Mayor had money in his account; and she thought this was an honor.

Councilmember Polanski said she thought attending a State Dinner at the White House was not the same as attending a social event in almost any other place; this was quite an honor and one of those political things you do when you represent the City of Milpitas as Mayor; she didn't see it so much as a social event as an event for some recognition of this City; and she thought the City could use all the good press possible.

Councilmember Livengood said that as everyone knew, he had supported these trips in the past; his problem with this one was the timing; he had a hard time just approving this trip when at the very same moment employees were being asked to take a cut in salaries; he didn't think this was bad but it was just the timing was bad.

MOTION to approve the Mayor's travel request to Washington, D. C. for a State Dinner and ceremony at the White House May 19, 2003.

M/S: Dixon, Polanski.

Ayes: 3

Noes: 2 (Gomez, Livengood)

8.  
Child Spree Program  
Donation Request

Vice Mayor Dixon reported this was an annual a request from the Milpitas Kiwanis Club for a donation to provide school clothes and supplies to underprivileged children through the Child Spree Program, which was one of the most successful charities the City has been a part of.

Mike Mendizabal, President-Elect, Milpitas Kiwanis Club, said this was truly a great event that took underprivileged children through Mervyn's to purchase clothes with \$100 given to each child by the Kiwanis Club. Mr. Mendizabal further stated they were also looking for volunteers to help the kids and were asking to use the City's logo at their golf tournament to raise funds for the event.

Mayor Esteves said he had experienced accompanying a child through the event, it was a great experience, and commended the Kiwanis Club for helping less fortunate kids.

MOTION to approve \$1,500 donation to the Child Spree Program from the FY 2003/2004 Community Promotions fund.

M/S: Dixon, Polanski

Ayes: 5

9.  
Retiree Spousal/Dependent  
Medical Benefit Fund

City Manager Wilson said the Human Resources Director could make a brief presentation if the Council wanted. Councilmember Livengood said this issue revolved around Police management and its relationship to the MPOA with the one percent retiree benefit fund; the Council authorized that the Police management receive the same benefit as the Police when they negotiated the last contract; staff has said they prefer to keep those two funds separate; his position was the opposite because both the POA and the management agreed that it is better to have a joint fund; there was no extra cost to do this; the problem with creating a fund for the Police management that has only six members was that the fund would be insolvent before you know it; throwing Police management in with the POA would create a fund that will be viable; and one of the issues with separate funds he felt needed to be considered when dealing with this was that a lot of people in the Police management have worked their way up through the ranks; when you go from the POA to an unrepresented manager, you would lose something.



Councilmember Livengood offered a MOTION, since there would be no additional cost to the taxpayers, to combine the Police management as part of the POA fund since both sides had agreed and thought it was a good idea.

Vice Mayor Dixon called for a point of order and asked the City Attorney if there was a legal conflict or perceived conflict because Councilmember Livengood was a member of the Police Department. City Attorney Steve Mattas responded there was no legal conflict and there was no recognition of a perceived conflict under the Political Reform Act.

Vice Mayor Dixon commented that this was a Closed Session item and it was unfortunate Councilmember Livengood wasn't present at the last session and subsequent three Closed Sessions when this was discussed. Vice Mayor Dixon said the problem for her wasn't that she didn't agree in concept but that it was taken out of Closed Session. Vice Mayor Dixon further stated that she would like to follow proper procedure, take input tonight, and redirect staff to follow through.

Councilmember Polanski said she needed help from the City Attorney to understand this process because it was something that was part of a bargaining agreement, negotiated on behalf of the City and the POA, the Council had been giving direction in Closed Session, this was the first opportunity to hear Councilmember Livengood; questioned how bargaining was handled in the City of Milpitas and if this sets a precedence, and she was confused. City Attorney Mattas commented that under the Brown Act, the Council has the authority to conduct negotiations through Closed Session but was not obligated to do so; during his tenure, generally the discussions have occurred in Closed Session; this item was placed on the agenda by Councilmember Livengood; and the Council should provide direction to staff as to how it wished to proceed.

Councilmember Polanski said she understood that Councilmembers could place anything on the agenda they wished but if the Council was going to discuss it and give direction, there was no back-up information or explanation to the public, and if the Council really wanted to have open honest dialogue, the public should get more information. Councilmember Polanski further stated she was not saying she had any disagreement with the issue; she was having difficulty with the process. Councilmember Polanski said this was the first time she had an opportunity to hear Councilmember Livengood on this and she was uncomfortable with the process.

Mayor Esteves asked what was the most common process that the Council has been doing. City Attorney Mattas responded his experience with this Council has been that most items have been handled through Closed Session and brought to the Council in open session for action. Mayor Esteves said this brought the Council into a very uncomfortable position; he felt uncomfortable negotiating in public and was not comfortable discussing a personnel issue in public; and the Council started the process in Closed Session and should complete it in Closed Session.

Councilmember Gomez said the Council had guaranteed Command staff the same benefits as the POA and he would second Councilmember Livengood's motion.

VOTE ON MOTION:                      Ayes: 2 (Gomez, Livengood)              Noes: 3

It was noted the motion failed.

MOTION to direct staff to schedule this issue on the May 20, 2003, Closed Session agenda.

M/S: Dixon, Polanski.

Councilmember Livengood said he would like to hear from the POA.

Eric Emmanuele, Vice President, MPOA, thanked the Council for hearing them tonight and said in his opinion, negotiations were finished on June 18, 2002; they were just trying to get put into effect something the Council had already granted to them, believed it was not the same benefit and won't be the same if it was put in separate accounts because of the chance that one of the funds might not make it; and they would just like to see this put in place so it's working.

Matt Toffey also thanked the Council for hearing them and said the issue was solvency and supporting the intent of the negotiations by combining it into one account for the purpose of maintaining the intent in the negotiating process of having a single benefit that would reflect upon the membership and also the Command staff.

Human Resources Director Cherie Rosenquist said pooling was possible but there were some challenges and legal issues that needed to be addressed; the issues of equity and fairness also needed to be addressed; having separate groups in the pool with equal voice could be a problem; and staff didn't want to minimize them because there would be challenges.

Attorney Eddie Kreitzberg also commented on one legal issue consideration stating that the POA represented classifications represented in the MOU and Police Command staff was unrepresented; and if, in the future, there was a desire to make a change in the level of benefits, the POA would have an opportunity to veto such a change because it would have an effect on the fund they participated in.

Councilmember Livengood said he would support the motion to bring this back in Closed Session but wanted to make it clear that this issue has been hanging around for almost a year, and the last time the Council dealt with it was in public on a Council agenda, and the POA has spent thousands of dollars and the City has spent thousands of dollars trying to resolve it.

VOTE ON MOTION:

Ayes: 5

10.  
Non-Denominational Invocation  
At Council Meetings

Mayor Esteves said he would like to shelve this item because it was one he started and he was surprised to see it put on the agenda by Councilmember Gomez. Councilmember Gomez said he saw the value in having a non-denominational invocation at the start of Council meetings that would celebrate the City's diversity, other cities did it, and that was why he put it on the agenda. Mayor Esteves said he was working on this getting more opinions and a balance of the whole community to make sure it won't be decisive.

MOTION to table the item until it is brought back by the Mayor.

M/S: Esteves, Dixon.

Ayes: 5

11.  
Restructure of VTA  
Board Membership

Principal Analyst Cindy Maxwell said this was a proposal that would allow the City of Milpitas and other cities that don't have a voting seat on the Valley Transportation Authority Board of Directors to have a vote. Ms. Maxwell explained that the City only has a vote on the Board two years out of six years and the proposal would increase the size of the VTA Board of Directors from 12 to 21 voting members while at the same time maintaining the same proportional vote representation for the City of San Jose and Santa Clara County.

Vice Mayor Dixon said it was very frustrating to be an alternate when you have opinions and are not allowed to vote; she had talked with other cities and the time had come to finally ready speak up.

MOTION to:

1. Approve the draft letter.
2. Adopt Resolution No. 7301 supporting the proposed restructure of the VTA Board of Directors.
3. Direct staff to send the letter to all affected jurisdictions and agencies.

M/S: Polanski, Livengood.

Councilmember Livengood said when he served on the Transportation Commission, it was San Jose that nailed this down and got it the way it is; he hoped that San Jose would take the lead in this and hoped that it would be successful.

Mayor Esteves said he thought it was long overdue and was glad the Vice Mayor brought it forward.

VOTE ON MOTION:

Ayes: 5

#### **ADJOURNMENT**

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 11:57 p.m. to May 13, 2003, and May 15, 2003, (if Necessary) for Budget Hearings at 6:30 P.M. in the Council Chambers.

Gail Blalock, CMC  
City Clerk

**The foregoing minutes were approved by the City Council as submitted on  
May 20, 2003.**

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**Gail Blalock, City Clerk**

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**Date**